

A P P E A R A N C E S

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ALSO PRESENT:

Mr. Robert Andreottola

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1 number of Applebee restaurants. They were a portfolio
2 restaurant holding company, having some, if I believe
3 I'm correct, of seven or eight different brands and took
4 it to the New York Stock Exchange. That was exactly
5 what I was trying to do with Great American Food Chain.

6 Rob Andreottola agreed to come on to --
7 with Great American Food Chain as the president of the
8 company. I had all the faith that he knew what to do,
9 how to do it. And it was not the Amici Restaurants that
10 convinced me to do the deal. It was having Rob
11 Andreottola on our team that convinced me to do that
12 deal.

13 Q. When you resumed discussions with the Amici
14 entities, had you hired Mr. Andreottola at that point?

15 A. We certainly -- no. We certainly had an
16 agreement. Rob was part of the package deal. I would
17 have never done the acquisition without Rob being part
18 of the deal.

19 Q. When you say Rob was part of the package deal
20 in the acquisition, what was it you were acquiring that
21 included Rob?

22 A. Rob agreed to come on as president of Great
23 American Food Chain, would stay in the Atlanta area.
24 Although, he and I had discussions at some point in time
25 that he may move to Dallas when we acquired other

1 brands. In fact, I remember even having a conversation
2 with him on his patio or outside of his home asking how
3 his wife would feel about moving from the beautiful home
4 on the golf course that they had in some suburb of the
5 Atlanta area to Dallas, Texas. He assured me that that
6 would not be a problem at the right time if everything
7 was moving in the right direction.

8 And so he and I had an agreement that he
9 would become the president of Great American Food Chain,
10 that he would stay there in Atlanta and that he would
11 oversee all the operations of the Amici Restaurants.

12 We also had some discussions about the
13 growth of that brand. We also had discussions that that
14 brand was probably not going to fit within our model and
15 portfolio in the future and that we might even -- that
16 we would probably spin it off or sell it and that even
17 possibly the Torino family would be a potential
18 repurchaser of the brand.

19 Q. What was Mr. Andreottola's relationship to
20 Amici at the time you were having these discussions?

21 A. To the best of my knowledge, he was a
22 consultant.

23 Q. In conjunction with -- you were there -- was
24 there anyone else with Amici that you were going to be
25 bringing in as part of your deal with the Amici

1 but they were not coded properly.

2 Q. Would -- what other -- what other information
3 or what other basis did you have to believe that these
4 errors existed?

5 A. Again, it became apparent, once we were
6 involved with them on a day-to-day basis, that they did
7 not have adequate personnel to perform the accounting
8 function.

9 Q. What effect would these discoveries about cash
10 flow have on the asset purchase price?

11 A. I'm not really sure whether it had -- I'm not
12 sure it would have had any significant effect on that.

13 Q. What is the source of concern about the errors?
14 Is it just going forward after the asset transaction, or
15 do you believe it would have affected your decision to
16 go forward with the asset purchase?

17 A. No. It -- it probably wouldn't have affected
18 us going forward with the asset purchase. But,
19 certainly, our budgets were affected. Going forward,
20 the operating budgets were definitely affected.

21 Q. And I may have not asked correctly. But would
22 you believe that this erroneous information would have
23 an effect on the purchase price?

24 A. I'm not sure, but I would say, not
25 significantly.

1 Q. Did you ever seek an adjustment of the purchase
2 price?

3 A. Yes. And I believe we got an adjustment of the
4 purchase price.

5 Q. And is it my understanding that the Asset
6 Purchase Agreement has a provision there for allowing an
7 adjustment of the purchase price?

8 A. Yes, it did.

9 Q. And how did you go about seeking that
10 adjustment? Let me try to --

11 A. Sorry.

12 Q. The -- when did this information first come to
13 your attention?

14 A. Probably months after the acquisition.

15 Q. And what steps did you take to raise this with
16 the Torinos after you discovered it?

17 A. There was some correspondence and -- I'm sure
18 written correspondence to Mike Torino.

19 Q. And do you remember what the time frame for
20 this was?

21 A. My best guess would be 2000 -- spring of 2012.

22 Q. And did your communication with the Torinos
23 lead y'all to have a discussion about adjustment of the
24 price?

25 A. I certainly had a discussion with Mike Torino

1 about the price, yes.

2 Q. And what was the nature of that discussion?

3 A. I don't recall exactly.

4 Q. But it was to raise this concern you had, was
5 it not?

6 A. There was a provision in the Asset Purchase
7 Agreement for an adjustment of the number, should there
8 be an error.

9 Q. And I assume -- do you recall whether
10 Mr. Torino asked for information to support your
11 recalculations?

12 A. I believe that we were getting all the
13 accounting information from their office, so they had
14 it. They were the ones providing it.

15 Q. And did he agree with you that the numbers
16 needed to be recalculated?

17 A. We certainly came to an agreement on it.

18 Q. And what was the nature of that agreement?

19 A. I do not recall.

20 Q. Did you reach a written revision of the Asset
21 Purchase Agreement?

22 A. I believe it was written, yes. Excuse me. A
23 total revision of the purchase agreement? No, I don't
24 believe that there was an -- like, a formal, legal
25 document amendment to the original purchase agreement.

1 A. I don't remember if he was or not.

2 Q. And was Cheryl Mullin involved in reviewing
3 information?

4 A. No, Cheryl Mullin never reviewed any financial
5 information.

6 Q. And who is Kendall Laughlin?

7 A. Kendall Laughlin is an attorney. Primarily,
8 his specialty is leases, commercial leases. And he
9 primarily does retail commercial leases, primarily those
10 being restaurants.

11 Q. Was he involved in reviewing the information
12 received from the Torinos?

13 A. No. Possibly the lease or leases.

14 Q. Who was responsible for making the decision to
15 go forward with the Asset Purchase Agreement? Was it
16 you?

17 A. Yes.

18 Q. And was any -- was anyone else involved in that
19 decision?

20 A. I believe, at the time, there was another --
21 there were two other board members, at the time, of
22 Great American Food Chain, a gentleman by the name of
23 Kevin Johnson (phonetic) and another, Jeff Brown
24 (phonetic).

25 And, with this acquisition, Mr. Andreottola

1 which we absolutely desperately needed someone with CFO
2 type of experience and capability. And so that would
3 have been his role.

4 Q. Do you recall Mr. Andreottola communicating to
5 you his belief that the deployment of Mr. Czufin or
6 Mr. Lazereth were essential to what he thought needed to
7 be done with Great American?

8 A. No. Although, I will say that we --
9 Mr. Andreottola and I both knew that we were in
10 desperate need of someone with the capabilities of Bruce
11 Lazereth as the CFO position. But I don't -- you know,
12 so that was one person -- that was one person that could
13 assume that role.

14 Q. Do you recall whether Mr. Andreottola expressed
15 to you any concern or thoughts that acquiring Canyon
16 Cafe was essential to the development of a plan that
17 involved Amici?

18 A. No, I do not recall that.

19 Q. Do you recall him expressing any concern that
20 not getting Canyon Cafe would present problems with the
21 growth plan for Amici?

22 A. No, not at all.

23 Q. Are you familiar with Lake Country Foods?

24 A. Yes.

25 Q. And how are you familiar with Lake Country

1 Q. Would it have been one or two or more than
2 that?

3 A. Probably more than that.

4 Q. As many as ten?

5 A. No.

6 Q. Do you recall what the occasions were that
7 brought you to Georgia after the Asset Purchase
8 Agreement?

9 A. No. Other than maybe just general business
10 matters.

11 Q. Do you have any specific recollection of a
12 meeting with the Torinos or anyone after the Asset
13 Purchase Agreement?

14 A. There were several meetings. Some of them
15 occurred here in Dallas.

16 Q. Do you recall what the subject matter of the
17 in-person meetings were?

18 A. Primarily, accounting and audits.

19 Q. Was this in conjunction with the operation of
20 the company, or were there registration -- or the S-1
21 registration process?

22 A. Well, it was in conjunction with the audits for
23 the S-1 registration process. But all of our operations
24 were Amici. So they were -- they were one and the same.

25 Q. Did you have any specific duties -- or what

1 were your specific obligations or duties, in your mind,
2 with regard to great American at this time?

3 A. My specific duties were to try to raise capital
4 and, primarily, oversee the registration process.

5 Q. And what efforts did you undertake to raise
6 capital?

7 A. I hit every single family and friend that I had
8 at the time.

9 Q. And did you -- were you successful in raising
10 any additional capital?

11 A. Yes, I was.

12 Q. And from whom?

13 A. I raised approximately \$450,000 that came from
14 my family, my friends. La Jolla Cove investors was one
15 hundred and -- well, there was two times we got money
16 from La Jolla Cove investors. The first time was -- I
17 netted 118,000. But the amount given to was -- and our
18 obligation to them was over that. But there were
19 attorneys' fees and closing fees and stuff like that
20 that came out of there. So it was 118,000 net that we
21 received from La Jolla Cove. I think the whole thing
22 was about 125. And then they gave us another \$25,000
23 later on.

24 I had a friend that put in -- John Ardone
25 (phonetic), just a personal, schoolboy friend of mine

1 that put a hundred thousand dollars in. I had other
2 people in the \$25,000 range. I believe -- again, this
3 is off the top of my head; I might be incorrect -- that
4 I put about 80,000 more cash into the company at that
5 time.

6 So -- you know, there was another gentleman
7 that we raised 15,000 from, another friend, a woman
8 friend of mine, that I got 12,500 from. In totality, it
9 was, I believe somewhere around the neighborhood of
10 \$450,000.

11 Q. Did you seek money from institutional investors
12 in any way?

13 A. La Jolla Cove investors is an institutional
14 investor.

15 Q. Has anyone else -- did you seek --

16 A. No.

17 Q. -- money from any other institutional
18 investors?

19 A. Well, we were seeking money from it. We didn't
20 receive any money from anyone else but La Jolla Cove
21 Investors.

22 Q. What steps were you taking to seek funding from
23 institutional investors?

24 A. I was personally contacting them.

25 Q. Do you recall who you contacted?

1 with Canyon prior to the acquisition of Amici. I could
2 be wrong. I can't remember the timing of it.

3 Q. But, other than Amici, there were no active
4 acquisition targets going on at the time that the Amici
5 transaction took place?

6 A. No.

7 Q. And would the primary reason for that be
8 funding?

9 A. No.

10 Q. What would have been the reason?

11 A. We didn't find one.

12 Q. But would funding have been a problem, if you
13 found it?

14 A. I don't know.

15 Q. You've discussed that you were actively looking
16 for other acquisition targets. What would have been the
17 funding for those targets if you had reached an
18 agreement with any of them?

19 A. Again, I explained to you that the Amici
20 acquisition was not a hundred percent owner-financing.
21 So once we got the target identified and the deal agreed
22 to, I went to friends, family, other business associates
23 and raised the money necessary to close the transaction.

24 I would have done exactly same thing with
25 another potential acquisition target. Whether I could

1 A. They were -- they were opened, then closed.

2 Yeah.

3 Q. What time frame would that have been?

4 A. 2006-ish. Around 2006, 2007.

5 Q. So this is at some point in time after the
6 acquisition of the shell or --

7 A. Yes, after the acquisition of the shell.

8 Q. Open and closed several restaurants?

9 A. Not several. Two.

10 Q. Two. And, during the years prior to the Amici
11 acquisition, was -- other than the consulting contract.
12 you mentioned, was Great American doing anything?

13 A. No.

14 Q. Now, we discussed Mr. Andreottola's involvement
15 leading up to the Asset Purchase Agreement. What did
16 you see his role as being when he came to work for Great
17 American?

18 A. Well, again, the plan was that he would run the
19 Amici -- oversee and run the Amici acquisition. And
20 then he would also be -- look for other acquisition
21 targets and help close other acquisition targets.

22 Q. What would -- if I understood what you
23 previously testified, his role with respect to the Amici
24 transaction -- he was a consultant with Amici, and he
25 brought Amici to you?

1 A. Correct.

2 Q. And then he facilitated your communications
3 with Mr. Torino in reaching an agreement about the
4 purchase of the Amici entities? Is that correct?

5 A. That's correct.

6 Q. And what was his role other than that with
7 regard to the time period up to the APA, the Asset
8 Purchase Agreement?

9 A. Well, I mean, he -- I think, again, we talked
10 about Tahoe Joe's, and we talked about Canyon Cafe.
11 Again, I can't recall exactly the timing. But he was
12 certainly discussing other potential opportunities with
13 me.

14 Q. And when did you discuss -- or when do you
15 first recall discussing him becoming a direct employee
16 of Great American?

17 A. Prior to the acquisition of Amici's.

18 Q. Do you recall when those discussions started?

19 A. They -- they started -- they were the reason
20 for me changing my mind from not being interested in
21 Amici's to being interested in Amici's. So whatever --
22 I don't recall the time frame. But it had to be either,
23 you know, winter of 2010 or early 2011. But it was
24 probably winter of 2010.

25 Q. And what did you -- how would you -- what would

1 be the job description you would give him once he came
2 on board with Great American -- how would you describe
3 that?

4 A. He came on board with Great American Food Chain
5 as the president of Great American Food Chain and a
6 member of the board of directors. So he was a director
7 of Great American Food Chain and the president of Great
8 American Food Chain.

9 Because of where we were in the stage of
10 development of Great American Food Chain, he was pretty
11 much also the director of operations. I mean, he was
12 over all of the operations of Great American Food Chain
13 at that time, which was Amici's Italian Cafe.

14 Q. And what was his role with regard to the S-1?

15 A. Rob had no -- Mr. Andreotolla had no major role
16 with the S-1 registration.

17 Q. And, when you discussed hiring Mr. Andreottola,
18 do you recall what terms were being discussed?

19 A. Generally, yes.

20 Q. And what do you recall?

21 A. Okay. He was going to come on for a salary, I
22 believe, of \$60,000 a year, beginning here. After 90
23 days -- I don't remember if it was 60 days or 90 days.
24 But in a short period of time, which I believe to either
25 be 60 or 90 days, I believe his salary was bumped to

1 \$75,000 a year.

2 There were terms and conditions in his
3 agreement with me that -- with Great American Food
4 Chain, sorry, that he would get a salary increase with
5 any -- with an acquisition of some percentage and not to
6 exceed some percentage.

7 He certainly had, in our agreement, you
8 know, where expenses would be covered. And I don't
9 remember the other terms and conditions exactly. But
10 that's primarily --

11 Q. Were these terms that he proposed to you and
12 you accepted? Did you go back and forth? Or do you
13 recall how they were developed?

14 A. He made the first proposal to me in writing in
15 an e-mail. I think we went back and forth once or twice
16 with it but not -- not very -- not very much. I think I
17 pretty much accepted his terms and conditions, other
18 than maybe some minor adjustments.

19 Q. Do you recall whether that acceptance was prior
20 to or after the Asset Purchase Agreement? I mean, did
21 you have everything locked down --

22 A. It was prior -- prior to. I would have never
23 acquired Amici's Italian Cafe without Rob Andreottola
24 being involved.

25 MR. ULOTH: Off the record.

1 A. Mr. Laughlin is how I find found her. I had a
2 relationship with Mr. Laughlin prior to Cheryl Mullins
3 (sic).

4 Q. So Mr. Laughlin, essentially referred you to
5 Ms. Mullins?

6 A. Mullins, that's correct.

7 Q. And did you sign a document like this? This
8 one doesn't have your signature.

9 A. I -- I believe I signed an engagement letter
10 with her. I can't -- I don't know if it was this one or
11 a modified one.

12 Q. You testified that you began discussing
13 Mr. Andreottola's role with Great American at some point
14 in time during the process prior to the Amici
15 transaction. Is that correct?

16 A. Correct.

17 Q. And would you agree that, from these documents,
18 it appears that, even as late as February 14th, two
19 weeks before the document, you were still discussing
20 what that relationship might involve?

21 A. Yes.

22 Q. And, in fact, when Ms. Mullin was looking at
23 the transaction in December, there was no reference to
24 preparing an employment agreement for Mr. Andreottola,
25 is there?

1 A. No.

2 (Exhibit 5 marked.)

3 Q. I'd like to show you Exhibit 5, which is the
4 Plaintiffs' First Amended Original Petition with
5 Discovery which was filed in your lawsuit. Have you
6 seen this document before?

7 A. Yes, I have.

8 Q. And your understanding is that this document
9 states the things that you're seeking in this lawsuit?
10 That's your --

11 A. Yes.

12 Q. -- operative pleading?

13 Now, I'd like you to look at Paragraph 11
14 of this document and read along with me. It basically
15 says in the second sentence that, "Due to the logistics
16 involved, plaintiffs initially declined to pursue the
17 acquisition." And --

18 A. I'm sorry. I'm not finding where --

19 Q. Paragraph 11 --

20 A. Yes.

21 Q. -- the second sentence.

22 A. Yes.

23 Q. And would you -- you described a scenario where
24 Mr. -- where you were approached regarding Great
25 American, and then you initially decided not -- that you

1 was not accurate.

2 Q. And is that a factor in your adjustment of the
3 purchase price that was reached with the Torinos?

4 A. No.

5 Q. And how did that affect the purchase price?

6 A. I don't think that affected the purchase price,
7 as I have testified earlier.

8 Q. If you look at Page 7, Paragraph 29, you state
9 that "Mr. Andreottola committed fraud by way of
10 misrepresentations made to plaintiff, on an ongoing
11 basis, made material false representations to plaintiff
12 regarding the status of Amici Restaurants" (sic).

13 What misrepresentations did he make
14 regarding the status of Amici Restaurants?

15 A. Mr. Andreottola presented me with a -- with the
16 EBITDA numbers the business was producing and a pro
17 forma of what this company would look like going forward
18 after the acquisition with our cost-based structure of
19 the new company. That didn't materialize to be
20 accurate.

21 Q. And how did this affect the purchase price?

22 A. It did not affect the purchase price.

23 Q. And how did this affect operations after the
24 company was acquired?

25 A. We couldn't meet our financial obligations with

1 all the G&A overhead that we -- that we had involved
2 with the company.

3 Q. Did you receive information from the Torinos on
4 this subject as well?

5 A. No. I received financial information from the
6 Torinos. But the pro forma, what this would look like
7 after the acquisition, was solely provided by Rob
8 Andreottola.

9 Q. You state that he committed fraud by way of
10 misrepresenting his commitment to grow the business. In
11 what way did he misrepresent his commitment to grow the
12 business?

13 A. I'm not sure this is referring -- hold on. Let
14 me read this again. I just want to make sure that I'm
15 understanding the question properly.

16 (Pause in proceedings.)

17 A. Okay. His commitment to grow the business with
18 plaintiffs in here does not only refer -- or
19 specifically refer to the Amici Restaurants. Okay? The
20 commitment to grow the business was involving other
21 acquisitions and other means of exercise -- or of
22 implementing our business-plan model.

23 Q. In what way did he misrepresent that intent?

24 A. Well, for example, we did another acquisition
25 of Yummy To Go. Rob's role in that was to provide a lot

1 of support to that company that was based here in
2 Dallas, Texas. All right? He was supposed to be over
3 here on a regular basis, when we acquired that company,
4 to help that company get on track.

5 He made very few trips over here. I could
6 probably count them on less than -- maybe two or three
7 trips over here and did not provide the support and --
8 and -- and things that we needed with that acquisition.
9 And it became a disaster very quickly.

10 Q. How is that a misrepresentation of his
11 commitment to --

12 A. Well --

13 Q. -- great American?

14 A. We -- because we needed his restaurant
15 expertise in these acquisitions to make sure that they
16 were -- they were going to perform in a way that was
17 going to contribute to the growth of Great American Food
18 Chain. He didn't do it. He said he would do it. He
19 made representations that he would do it. But, when it
20 came down to it, he didn't do it.

21 Q. Do what?

22 A. Manage and contribute his expertise in the
23 operations of the -- of the business.

24 Q. Of Great American?

25 A. Well, in Great American's sub -- subsidiaries,

1 which is Great American. We're a holding company. So
2 any subsidiary we have in here is part of Great
3 American.

4 Q. So your -- the factual basis for your assertion
5 that he misrepresented his commitment to grow the
6 business with plaintiffs is the fact that he did not
7 regularly oversee the operation of Yummy To Go?

8 A. That was part of it, yes.

9 Q. What are the other parts?

10 A. I'm drawing a blank right now.

11 Q. So you have no recollection of any other basis
12 for that assertion in your lawsuit, other than the Yummy
13 To Go operation?

14 A. No. Part -- okay. Another part of this is
15 that, you know, we were -- we were bleeding money
16 because of our G&A overhead. All right? Rob could have
17 -- and I expected him to -- assume the role of what
18 Chris Torino and Mike -- and partly what Mike Torino was
19 doing, that we could have cut our overhead expense and
20 met our financial obligations.

21 He made representation to me, when we had a
22 phone call or meeting, that -- when we knew that we were
23 having trouble meeting our financial obligations, that
24 he would cut this down to the bare bones and operate all
25 this himself over there so we can meet our financial

1 obligations. And I took that that he would do that.

2 Q. When did that conversation occur?

3 A. Probably sometime in 2012.

4 Q. That conversation was after the Asset Purchase
5 Agreement was signed?

6 A. Yes.

7 Q. What other failures of commitment do you refer
8 to in that allegation?

9 A. I think I've stated what I -- what I meant --
10 what's meant by that.

11 Q. Nothing else that you can recall?

12 A. No.

13 Q. And then you assert that he misrepresented his
14 promise to act in plaintiffs' best interests. In what
15 way did he misrepresent his promise to act in
16 plaintiffs' best interests?

17 A. Again, the primary thing on that was that he
18 knew -- he and I had several conversations, that I was
19 not comfortable with the current management or -- of
20 Amici's, the family members, that the only reason I was
21 agreeing to do this acquisition was because he was
22 coming on board. And I was really investing in
23 Mr. Andreottola as much -- or Great American Food Chain
24 was investing in Andreottola. And the people I raised
25 money from, the commitments I made for loans were

1 investing in Andreottola and not necessarily in the
2 brand.

3 I felt that the brand had the potential he
4 represented. But we certainly weren't going to invest
5 in the people, the original people, the Torinos, not
6 that they're bad people. But they did not have the
7 experience or the abilities that we would have ever put
8 our dollars behind. We put our dollars behind Rob
9 Andreottola.

10 He made representations to me that he would
11 be there to operate this restaurant. He made
12 representations to me that, if we could not meet our
13 financial obligations, that he would trim all of the
14 costs primarily associated with human resources -- and,
15 again, Mike Torino and Chris Torino being on the top of
16 that list -- and run this company so that we can meet
17 our financial obligations. He didn't do that.

18 Q. Were these made to you prior to the Asset
19 Purchase Agreement or after?

20 A. I would have never acquired -- or approved the
21 acquisition of this company without the assurance or the
22 belief that he had -- he was committing to do the things
23 that he said he would do with us.

24 Q. Did you give him an employment agreement that
25 would tie him up for a period of years?

1 A. No.

2 Q. So how long would he have had to stay with the
3 company before you felt like this commitment was
4 confirmed?

5 A. Well, certainly -- look, I would have been -- I
6 would have been comfortable with him leaving us at any
7 time in which we were in a position to manage the
8 acquisition or -- or be able to fulfill our obligations.
9 He left us high and dry.

10 Q. However, there is no set term or time which you
11 believe he had to stay to maintain his obligations, as
12 you see them?

13 A. There wasn't a specific, set time. But he
14 didn't fulfill those obligations.

15 Q. Did you make all of the payments that were due
16 to Mr. Andreottola?

17 MS. MARTINI: Objection, form.

18 Q. When I say "you," Great American.

19 A. No.

20 Q. What was that, 5?

21 A. That was 5.

22 (Pause in proceedings.)

23 Q. Can you tell me what actions you took to verify
24 the accuracy of the EBITDA information that was provided
25 to you by Mr. Andreottola?

1 accurate.

2 Q. You've testified -- or I stated --

3 MR. ULOTH: Strike that.

4 Q. Do you believe that Mr. Andreotolla made any
5 misrepresentation to you regarding his experience in the
6 restaurant business?

7 A. No.

8 Q. And is any of the information that you received
9 from him by way of a resume` or otherwise incorrect?

10 A. To the best of my knowledge, it's correct.

11 Q. And was -- so do you believe that
12 Mr. Andreottola made any misrepresentations to you about
13 his prior experience in any way?

14 A. Not to my knowledge.

15 Q. What was the basis for your decision to hire
16 Mr. Andreottola?

17 A. I -- as I testified earlier, his experience,
18 restaurant experience; but, primarily, it was because he
19 did exactly with Abado Brands that I was trying to
20 accomplish with Great American Food Chain.

21 (Pause in proceedings.)

22 A. This was 5 here.

23 (Exhibit 6 marked.)

24 Q. Yeah. I'll show you what I've marked Exhibit
25 6. And, if you would turn to Page 5 and look at the

1 section toward the bottom called -- "plaintiffs
2 calculate their damages as follows." And it begins
3 GAMN/Amici Enterprises. Are the closing costs you're
4 identifying there the costs enclosed in the APA,
5 Asset --

6 A. Yes.

7 Q. I'm sorry. The Asset Purchase Agreement?

8 A. Yeah. I've got you. Yes.

9 Q. And that's actual costs that you've paid and
10 incurred?

11 A. Yes.

12 Q. Does that include the attorney's fees to
13 Ms. Mullin?

14 A. I believe it has -- it does.

15 Q. And then you're alleging your damages are
16 operating losses of Amici of \$810,000. What is that
17 based on and over what time period?

18 A. That would be from inception to probably the
19 end of 2014.

20 Q. And do those operating losses include the
21 payment of salaries? Is that a factor in calculating --

22 A. Yes. I'm sorry.

23 Q. And were salaries being paid to the Torinos?

24 A. Yes.

25 Q. Did you receive any salary?

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE GREAT AMERICAN FOOD)
CHAIN, INC., AND)
EDWARD SIGMOND,)
Plaintiffs,) CIVIL ACTION NUMBER
VS.) 3:14-CV-01727-L
ROBERT ANDREOTTOLA,)
Defendant.)

STATE OF TEXAS *

COUNTY OF COLLIN *

I, April C. Presley, Certified Shorthand Reporter,
in and for the State of Texas, hereby certify to the
following:

That the witness, EDWARD SIGMOND, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the original deposition transcript was
delivered to Ms. Tanja Martini, attorney for the
Plaintiffs;

That a copy of this certificate was served on all
parties and/or the witness shown herein on

8/17/15;

That the amount of time used by each party at the
deposition is as follows:

1 Ms. Tanja K. Martini - 0 hours, 0 minutes

2 Mr. J. Douglas Uloth - 2 hours, 57 minutes

3 That, pursuant to information given to the
4 deposition officer at the time said testimony was taken,
5 the following includes counsel for all parties of
6 record:

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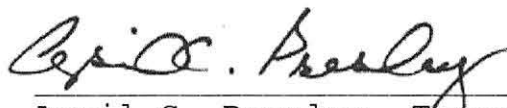
22 I further certify that, pursuant to FRCP Rule
23 30(f)(1), the signature of the deponent:

24 X was requested by the deponent or a party
25 before the completion of the deposition and that the

1 signature is to be before any notary public and returned
2 within 30 days from date of receipt of the transcript.
3 If returned, the attached Changes and Signature Page
4 contains any changes and the reasons therefore;
5 _____ was not requested by the deponent or a
6 party before the completion of the deposition.
7

8 I further certify that I am neither counsel for,
9 related to, nor employed by any of the parties or
10 attorneys in the action in which this proceeding was
11 taken and, further, that I am not financially or
12 otherwise interested in the outcome of the action.

13 Certified to by me this 14th day of August 2015.

14
15 

16 April C. Presley, Texas CSR
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TAB E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE GREAT AMERICAN
FOOD CHAIN, INC.
AND EDWARD SIGMOND
VS.
ROBERT ANDREOTTOLA

)
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CIVIL ACTION

NO.: 3:14-cv-1727-L

ORAL DEPOSITION OF
ROBERT ANDREOTTOLA
JULY 30, 2015

ORAL DEPOSITION OF ROBERT ANDREOTTOLA, produced as
a witness at the instance of the Plaintiff, and duly
sworn, was taken in the above-styled and numbered cause
on the 30th day of July, 2015, from 10:43 a.m. to
12:18 p.m., before Kimberly R. Spurger, CSR in and for
the State of Texas, reported by machine shorthand, at
the law offices of Uloth, P.C., 15455 Dallas Parkway,
Suite 600, Addison, Texas, pursuant to the Federal Rules
of Civil Procedure and the provisions stated on the
record or attached hereto.

ORIGINAL

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ALSO PRESENT: Mr. Edward Sigmond

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1 contract with Amici ended in -- I'm sorry -- in
2 February of 2011?

3 A. Didn't have a contract with them.

4 Q. Okay. Then your consulting --

5 A. Yes.

6 Q. -- with them stopped in February 2011?

7 A. Say that again.

8 Q. Sorry. That was a bad question.

9 A. Yeah. I'm a little confused with what you're
10 saying.

11 Q. So your consulting with Amici ended in
12 February of 2011; is that correct?

13 A. Yes. Well, there's two pieces to this.

14 Q. Okay.

15 A. The first June and July ended. And then in
16 October, Mike Torino and Chris Torino asked me to help
17 them with their menu. So I started doing menu work for
18 them and that's -- was finished probably in early
19 February.

20 Q. Okay. And that's in 2011?

21 A. Yes.

22 Q. Okay. Now, with the consulting work that you
23 had with them, was that a -- you were working as an
24 independent contractor?

25 A. Uh-huh.

1 Q. Okay.

2 A. Yes. Sorry.

3 Q. And then how is it that you became involved
4 with the Amici acquisition by GAMN?

5 A. I introduced Keith to -- to the Torinos and
6 Keith introduced Ed to the Torinos and that's how it got
7 started. They -- they agreed that they thought it would
8 be a good time for them to sell their company.

9 Q. Okay. And when did that introduction occur?

10 A. June of 2010.

11 Q. And during that entire acquisition process,
12 what exactly was your role?

13 A. I didn't have a role in the acquisition at
14 all. I was focusing on the menu. And every now and
15 then, I'd have a call with the Torinos or with Ed, but
16 predominantly, that was -- I was not an employee of GAMN
17 nor of the Torinos.

18 Q. Okay. So you didn't make any representations
19 about wanting to run the restaurant for GAMN?

20 A. No. When Ed said if he was to buy this thing
21 would it be my interest and I said it'd be interesting
22 to run this company for him --

23 Q. Okay. And --

24 A. -- the Amici's.

25 Q. And when you say run it, what exactly did you

1 mean by that?

2 A. Develop it, develop the menu, grow it, its
3 consumer metrics, its financial metrics, that kind of
4 stuff.

5 Q. And did you end up doing that?

6 A. Yes.

7 Q. When did you begin doing that?

8 A. End of February whenever they signed the APA
9 and officially took the company over.

10 Q. Now, during the -- prior to the APA being
11 executed -- and by that, you know we're talking about
12 the asset purchase agreement, correct?

13 A. Correct.

14 Q. -- did you make any representations to GAMN
15 or Ed about what role or the specific duties that you
16 wanted to have as the president or what goals you would
17 achieve for GAMN?

18 A. No.

19 Q. Okay. Did you ever talk to Ed about the
20 ABITA [phonetic] of Amici and how you could --

21 A. What's ABITA?

22 Q. EBITDA. I'm sorry.

23 A. EBITDA.

24 Q. EBITDA, yes.

25 A. Cash flow.

1 Q. How you can improve the cash flow for Amici?

2 A. Probably in conversation. We had
3 conversations about their current cash flow from what
4 they were presenting to us and what the opportunities
5 were. But in terms of hard specific numbers, no.

6 Q. Did you tell Ed that the EBITDA wasn't
7 sufficient to cover cash flow or overhead and that you
8 would be able to fix that and correct that problem?

9 A. No. Amici's cash flow -- if you added up the
10 company restaurants and you added up the franchise
11 revenue, it was roughly about \$380,000, I think. If you
12 look at the Amici's G&A -- dedicated G&A and then a new
13 debt service, that would cover that.

14 On the other hand, you had GAMN G&A; my
15 salary, Ed's assistant, Ed's other person he hired in
16 Dallas, his accountant. And then you had the fees for
17 the S-1 registration, you had legal fees, you had CapEx.
18 You add all that up, we were about \$300,000 short. So
19 the bottom line was we needed funding for the first day.
20 And that was explained to everybody and Ed actually
21 agreed with that.

22 Q. Okay. And whose job was it to get the funding
23 that was necessary?

24 A. Ed Sigmond's.

25 Q. And does the president of a corporation have

1 any role in obtaining funding?

2 A. That wasn't my role. At that particular time,
3 I was really running the restaurant operations.

4 Q. Okay.

5 A. I was focused on the transition of that.

6 Q. And later on during your tenure as president
7 of GAMN, did your role change so that you would have
8 to go out --

9 A. No. I was more --

10 Q. -- and obtain funding?

11 A. -- interested in bringing other M&A to the
12 company.

13 MR. ULOTH: You need to, like, let her
14 finish her question --

15 A. Oh, I'm sorry.

16 MR. ULOTH: -- before you start answering.

17 A. What was your question again?

18 MS. MARTINI: Would you read it back,
19 please?

20 THE REPORTER: Yes.

21 (The record was read back as requested.)

22 Q. (By Ms. Martini) Work on develop -- or
23 obtaining funding?

24 A. That wasn't my primary role. I did assist Ed
25 and met with a guy named Robert Hersch, but that was

1 all around?

2 A. No. Keith told me that Ed was not interested.
3 That's all I know.

4 Q. Okay.

5 A. And to pass it on to the Torinos and that's
6 what I did.

7 Q. Now, you would have gotten the \$50,000 finder
8 fee with the Amici acquisition, correct?

9 A. Supposedly.

10 Q. Okay. But under the terms of the agreement
11 between GAMN and ARC, you should have?

12 A. Correct.

13 Q. And so you had some kind of a financial
14 interest in GAMN acquiring Amici. Is that fair to say?

15 A. Yes.

16 Q. And with that, there was a great incentive for
17 you to close the deal at all costs?

18 A. And Ed was aware of that from day one.

19 Q. Did you ever advise Ed that this might not be
20 the best opportunity for GAMN?

21 A. No. I advised Ed -- we were working on other
22 deals at the time. There were other good things out
23 there like Canyon Cafe and things, but we had a plethora
24 of opportunities and Ed was in charge of GAMN and he was
25 making those decisions.

1 Q. So you weren't in Cheryl Mullin's office for
2 any time to --

3 A. That was post. And at that time in Cheryl
4 Mullin's office, we were reviewing the Lake Oconee
5 contract.

6 Q. And what was that?

7 A. Ed was interested in buying the Lake Oconee
8 franchisee. And the franchisee developed the APA and
9 we were viewing it at her office with Mike Torino and
10 Ed Sigmond.

11 Q. Okay. Now, did Cheryl Mullin play a role
12 in the acquisition of the Amici restaurants to your
13 knowledge?

14 A. The only knowledge I had was she assisted in
15 developing the APA and some of the due diligence that
16 you guys discussed yesterday.

17 Q. Okay.

18 A. That was the first time I even met Cheryl
19 Mullins was at that meeting, at the Lake Oconee APA.

20 Q. And did you participate in any of the due
21 diligence of the Amici acquisition?

22 A. No. Well, define due diligence for me.

23 Q. Well, did you investigate the financials of
24 Amici to see whether it was worth pursuing for GAMN?

25 A. No. The finances were provided by Mike Torino

1 and they were forwarded to Ed. We discussed them. But
2 as far as going back and looking at the tax records and
3 conforming sales and revenue, that was not my position.
4 I was not an employee for either company.

5 Q. Okay. I notice in your interrogatory answers
6 that you said that they were -- and use the term that
7 you used -- unaudited -- I think it was unaudited
8 financials.

9 A. We knew from the get-go -- Mike Torino
10 probably in the first meeting said, Our financials are
11 not audited.

12 Q. And what does that mean when you're looking at
13 financials --

14 A. That somebody --

15 Q. -- of a company?

16 A. -- has not audited the finances. And so the
17 only thing they really can go off is the tax records.

18 Q. Okay. And is that what you-all used for the
19 tax records?

20 A. I don't know. I did not develop the APA for
21 Amici's. I was not involved in that process.

22 Q. And you didn't provide any financial
23 information to Ed or GAMN?

24 A. If I did, it was through Torinos as the
25 conduit to send to Ed.

1 Q. Okay. So in your role as the agent through
2 ARC to put Ed or GAMN and the Amici restaurants
3 together, there was nothing that you did to facilitate
4 the acquisition. You weren't providing information to
5 either side. You were just a conduit?

6 A. And doing menu analysis and developing menus
7 for them.

8 Q. Right.

9 A. That was my role. I couldn't tell either
10 of them what to do. No. They were the ones having the
11 conversations.

12 Q. Now, when Ed walked away from the Amici deal
13 initially, did he give you a reason why he wasn't
14 interested?

15 A. Back then, I probably couldn't remember. Once
16 again, Keith was the one that said Ed wasn't interested.
17 And then he said, Do you have anything else? At that
18 particular time, I said no.

19 Q. Okay. There wasn't anything about the
20 distance between the two -- between Dallas and Atlanta?

21 A. Well, my assumption is that Ed's business
22 was in Dallas and, you know, Amici's is in Atlanta.
23 I assumed that would be a situation.

24 Q. And then later on when you offered to run
25 Amici restaurants for him, you were already living in

1 Atlanta at the time, right?

2 A. Yes. Not Atlanta, outside of Atlanta.

3 Q. But in the greater Atlanta area?

4 A. Yeah, where the restaurants were.

5 Q. Okay. Makes sense. So when you offered to

6 run the restaurants for him, there was -- it was very

7 advantageous to GAMN to have you there in Atlanta or the

8 Atlanta area to run those restaurants, right?

9 A. It was a convenience, yes.

10 Q. It was more than a convenience. I mean, it
11 was a necessity. Isn't that fair to say?

12 MR. ULOTH: Objection, leading.

13 Q. (By Ms. Martini) You can answer.

14 A. It wasn't a necessity. I open restaurants all
15 over the country and not live there.

16 Q. But this was a little different because you
17 were kind of starting it over in a way.

18 A. No. It wasn't a start-up. It wasn't --

19 Q. I'm not saying it was --

20 A. -- a start-up company.

21 Q. But it was a start-up. You were redoing
22 the menus. You were kind of doing a major shift in
23 management.

24 A. No, I wasn't doing a major shift in
25 management. Management was still employed and still

1 there.

2 Q. But you were kind of running the show at this
3 point rather than the Torinos?

4 A. Yes.

5 Q. And you were changing the menu?

6 A. The menu was changed prior. We were finished
7 with that process in November.

8 Q. Okay. And the Torinos weren't really in
9 control of their own restaurant anymore since GAMN was
10 now owning and operating it?

11 A. No.

12 MR. ULOTH: Objection, leading..

13 A. Chris was very involved in the company,
14 founded the company, knew the managers very well, was
15 still making decisions. Mike was looking for real
16 estate, still managing the financials of the company.
17 They were very involved in the company.

18 Q. (By Ms. Martini) What benefit do you think
19 you added to GAMN by acting as president of the company?

20 A. Of GAMN or Amici's?

21 Q. GAMN.

22 A. Bring in opportunities from an M&A
23 perspective, giving them the opportunities to develop an
24 infrastructure to grow the organization as we brought on
25 more brands and have an ability to bring people in that

1 I knew in the industry that were very talented.

2 Q. And who did you bring in from the industry?

3 A. Nobody because we didn't buy anything but
4 Amici's.

5 Q. Well, you bought Yumi-to-Go, didn't you?

6 A. I'm sorry?

7 Q. Yumi-to-Go, wasn't that another purchase?

8 A. We didn't buy Yumi-to-Go. We bought a
9 licensing to open some Yumi-to-Goes.

10 Q. Okay. And your tenure as president was for
11 how long? A little bit over a year?

12 A. Sixteen months, I think.

13 Q. What did you accomplish in that 16 month
14 period?

15 A. Restaffing the restaurants, we improved sales,
16 food cost went down, beer and liquor cost went down, we
17 had more stable management in the Amici's brand. Tony
18 opened a Yumi-to-Go. It wasn't very profitable in terms
19 of its sales. Other than that, bringing some M&A to the
20 company. And just working on a day-to-day basis, what
21 you do from an operational perspective; making sure you
22 perform from a consumer metric perspective.

23 Q. So when you said you -- GAMN only purchased
24 licensing for Yumi-to-Go?

25 A. From what I understand, we had the right to

1 Amici's. I think they did an audit in 2009 that didn't
2 count. We had to go back and do 2010. Things just kept
3 happening with this audit. We changed accounting firms.
4 We changed the legal firm. Ed, for some reason, changed
5 the firms. He didn't think they were getting the
6 results that we needed.

7 Q. Uh-huh.

8 A. And so this thing kept going on and on and on
9 indefinitely.

10 Q. Now, prior to the asset purchase agreement
11 being executed, did you have any conversations with Ed
12 about the pro forma of the Amici restaurants?

13 A. No. Once again, the pro forma we're talking
14 about is we understood Amici's cash flow. We also
15 understood bringing on additional G&A from a GAMN
16 perspective. We wanted to see the difference in that.
17 Could Amici's fund their own debt service and the
18 dedicated G&A and what was leftover to settle GAMN --
19 to accommodate GAMN's G&A. Well, there was a two to
20 \$300,000 difference from day one. We all knew we had
21 to have an influx of capital -- about \$300,000 -- to
22 maintain our operational, you know, smoothness. Not
23 extending AP to 60 days, so forth and so on.

24 Q. And did you and Ed ever have conversations
25 about firing Mike or Chris Torino from the company?

1 A. I think that happened in March or April of
2 2012 when -- Mike actually sent Ed some e-mails about
3 the fact we need to start an austerity program 'cause we
4 can't go on. We need to get rid of Rob and some other
5 people.

6 Q. Are you aware that Mike ever took any money
7 from the company?

8 A. No. If you mean, like, took a salary.

9 Q. Well, no. Are you aware that he ever took,
10 like, 40 or \$60,000 from the corporate funds?

11 A. No.

12 Q. When you were negotiating your role as
13 president for GAMN, do you recall the -- those
14 negotiations you had with Ed?

15 A. I wouldn't call them negotiations. I would
16 call them that we agreed I was gonna work for GAMN and
17 the only negotiations we had was in terms of financial.

18 Q. Okay.

19 A. He -- I wanted a certain financial situation,
20 which you guys are aware of. I sent that information
21 over and Ed said that he couldn't afford it. And just
22 for the Amici's, he thought this was more appropriate
23 and I agreed. However, once again, Canyon was already
24 teed up and we assumed Canyon would come on right after
25 the Amici's acquisition based on the S-1 and we were

1 gonna negotiate our salaries at that time.

2 And Ed also informed us that during the
3 S-1 process, that there should be no employment
4 agreements because it would slow the process down and
5 convolute it. And the Torinos were the ones that really
6 wanted employment agreements.

7 Q. Did you ever tell Ed that your focus would
8 be -- that you had a commitment to the company to make
9 it grow?

10 A. Yeah. I was there to help him grow the
11 company. Whether it's their acquisition or it's the
12 acquisition of the Amici franchisees or open new
13 restaurants. That was the full intention of this.

14 Q. Okay. I'm gonna hand you what I'm gonna mark
15 as exhibit -- mark as Exhibit 1.

16 MR. ULOTH: I guess I'm wondering, do we
17 want to, like, do consecutive or sequential exhibit
18 markings?

19 MS. MARTINI: You know, we can do that.

20 MR. ULOTH: It might make more sense in
21 terms of --

22 MS. MARTINI: We started -- what was it?
23 It was 6 yesterday.

24 MR. ULOTH: I think it was 6 yesterday,
25 so we can start this one at 7. You don't have to. I'm

1 page that's marked Defendant -- or DEF 00014.

2 A. Gotcha.

3 Q. So in this e-mail that's dated October 21st,
4 2010, here you're offering to run Great American Food
5 Chain, correct?

6 A. Uh-huh.

7 Q. And you want to assume the role of leading
8 Amici's to the next level of profitability and
9 conservative growth. What does that mean?

10 A. Conservative growth means grow within your
11 means through your cash flow. And taking it to the next
12 level is restructuring the company in terms of its
13 operational performance.

14 Q. And did you do that?

15 A. Uh-huh. Sales were up.

16 MR. ULOTH: Answer yes or no as opposed
17 to --

18 THE WITNESS: Uh-huh?

19 MR. ULOTH: -- nodding or uh-huh.

20 A. Yes.

21 Q. (By Ms. Martini) How did you do that?

22 A. Put a new menu in place which reduced food
23 cost. The new menu increased lunch sales. They were in
24 a positive same store sales. And we reduced beer and
25 liquor costs. Those were the first things I attacked.

1 risk free without knowing what GAMN's --

2 A. Because we already got the primary numbers
3 from -- from Amici.

4 Q. Now, did you initially approach Ed about
5 wanting to be the president of GAMN or did he approach
6 you about that?

7 A. He approached me about being the president of
8 GAMN at the particular time I was talking -- initially,
9 when I talked with Ed was about Amici's. And then later
10 on, it evolved from the president of GAMN after Canyon
11 Cafe got involved, other things got involved.

12 Q. And that's when -- then you sent this
13 e-mail --

14 A. Uh-huh.

15 Q. -- after the initial discussions because --

16 A. Right.

17 Q. -- if I'm gonna do this, this is what I want?

18 A. Right.

19 Q. Gotcha. And then at some point, GAMN did hire
20 you. And I want to say that's in February of 2011?

21 A. Say that again.

22 Q. GAMN hired you in February of 2011?

23 A. After the date of the close.

24 Q. And there was an employment agreement that was
25 generated by GAMN for you. Have you seen that?

1 A. You know, I recollect seeing it.

2 Q. Well, I'm curious if -- 'cause your signature
3 is not on it, so I was curious why you never signed it.

4 A. Because the employment agreement -- the
5 financial arrangement that Ed and I talked about was --
6 I think it was in late February -- was right now, it's
7 just Amici's. It was -- my role was only gonna be at
8 this limited scope. It was only with so much money I
9 agreed to that. But with Canyon Cafe already teed up,
10 my assumption was we would renegotiate going forward.

11 Q. Okay. And after 16 months, was there ever a
12 renegotiation of your --

13 A. I'm sorry?

14 Q. During your 16 month tenure with GAMN, was
15 there ever a time that y'all renegotiated your terms?

16 A. We never bought anything else. My role was
17 still just the Amici's.

18 Q. Okay. But there was a point where your salary
19 increased.

20 A. Right. When I talked to Ed on the phone was
21 that we'd increase my salary from 60,000 to \$72,000
22 after three months.

23 Q. And I think that was also a term in the
24 employment agreement. Do you recall that?

25 A. If you say so, yes.

1 Q. Now, with the employment agreement, there was
2 a code of ethics attached to it. Even though you didn't
3 sign the employment agreement, would you -- were you --
4 did you have to abide by the code of ethics of the
5 company?

6 A. I wouldn't know because I didn't read the
7 employment agreement. I don't -- I don't think I did.

8 Q. Okay.

9 A. I wouldn't have seen the code of ethics.
10 I didn't -- my whole thing was about a financial
11 arrangement, not an employment agreement.

12 Q. Okay. Do you know whether other employees had
13 to abide by the code of ethics that was set out by GAMN?

14 A. I'm not quite sure what code of ethics was set
15 out by GAMN. I mean --

16 Q. Well, have you -- and you were also a director
17 of GAMN -- you were on the board of directors?

18 A. Yes.

19 Q. Now, did you ever read the bylaws for GAMN
20 when you were either the president --

21 A. Probably.

22 Q. -- or on the board?

23 A. Probably.

24 Q. I'm going to hand you what I'm going to mark
25 as Exhibit 8 -- now, as a director of GAMN, what are

1 your responsibilities?

2 A. We would have periodic board meetings and talk
3 about the financial condition of the company. We'd also
4 talk about future M&A. That's about the scope of what
5 we did. The meetings -- we only had probably two that I
6 can remember.

7 Q. And were the meetings in person or were they
8 on the telephone?

9 A. The first -- I think one of them was on the
10 telephone. I think we might have had one or two in
11 person --

12 Q. And --

13 A. -- in Dallas here.

14 Q. Okay. And when you're a director or on the
15 board of a company, do you believe that you owe any
16 duties to the company?

17 MR. ULOTH: Objection --

18 A. Explain to me what you're trying to say.

19 MR. ULOTH: -- form.

20 Q. (By Ms. Martini) Well, what -- when -- as a
21 director of the company, it's your job to make sure that
22 everything is happening in the best interest of the
23 company. Is that fair to say?

24 MR. ULOTH: Objection, leading --

25 A. That's fair to say.

1 MR. ULOTH: -- legal conclusion.

2 Q. (By Ms. Martini) Well, do you believe that as
3 a director of a company, that you have a duty of loyalty
4 to the company?

5 A. I have a duty to perform my job for a company.

6 Q. Do you have a duty of candor?

7 MR. ULOTH: Objection, legal conclusion.

8 A. I -- no. Yes, I guess.

9 Q. (By Ms. Martini) And with that candor, do you
10 believe that that includes a duty to fully disclose
11 anything that you're doing?

12 MR. ULOTH: Objection, legal conclusion.

13 A. I'm pretty transparent.

14 MR. ULOTH: Objection, leading.

15 A. I disclosed everything in the company.

16 Q. (By Ms. Martini) Okay. But at some point
17 during your tenure with GAMN, you began looking for a
18 new job opportunity?

19 A. Post GAMN.

20 Q. Well, when did you first -- 'cause you took a
21 job with AFC, American Franchise.

22 A. Correct, in August of 2013 -- '12, I mean.

23 Q. Okay. When did you -- when were you first
24 contacted by them?

25 A. April.

1 Q. April of what year?

2 A. 2012.

3 Q. Who contacted whom?

4 A. They contacted me.

5 Q. How did that come about?

6 A. Picked up the phone and called me.

7 Q. Did you have a prior relationship with them?

8 A. Yes, I did.

9 Q. Well, I mean, they could have used a
10 headhunter. I --

11 A. No.

12 Q. So they telephoned you?

13 A. Called my cell phone.

14 Q. Okay. And what prior relationship did you
15 have with them?

16 A. I only knew one of the gentlemen, Bill
17 Georgas. I sold him 44 Applebee restaurants back in
18 2000 and -- I mean, 1998.

19 Q. And when he contacted -- when he telephoned
20 you in April of 2012, did he say, We're looking for
21 someone, are you interested, or how did that
22 conversation go?

23 A. He said they were looking to start a company
24 again and get into the tier one restaurant business and
25 would you be interested in probably doing something with

1 us if this comes to fruition.

2 Q. And what was your response?

3 A. Keep me in mind. It wasn't a deal. There was
4 nothing. It was just -- he was -- he was fishing.

5 Q. Okay. But didn't they close the deal in May
6 of 2012?

7 A. No.

8 Q. They didn't acquire 33 Applebee restaurants?

9 A. No. They acquired 17 Applebee's restaurants
10 August 12th of 2012 and they acquired 16 on September
11 12th of 2012.

12 Q. But didn't they fax to you an employment
13 agreement in May of 2012?

14 A. That was a financial arrangement. That if I
15 did come to work for them, this is what I was desiring.

16 Q. And in that agreement, didn't it say that they
17 would -- once they acquired these companies, that you
18 would then come on as a COO?

19 A. Yes.

20 Q. So in May of 2012, you were already
21 negotiating a job salary.

22 A. This is the financial package I'd like if they
23 got a deal done. They were looking at multiple things
24 and some of the things didn't come to fruition and some
25 things did.

1 Q. Did you tell anybody at GAMN that you were
2 looking for a job with someone else?

3 A. I wasn't looking for a job with someone else.
4 They contacted me. I was still focused on GAMN.

5 Q. Well, you signed the employment agreement.

6 A. It was a financial arrangement. It wasn't an
7 employment agreement.

8 Q. I'm pretty sure it says across the top
9 employment agreement and not financial arrangement.

10 A. If you also read into it, it says, This is not
11 an employment agreement in the detail.

12 Q. Let's take a look.

13 A. Please do.

14 Q. Well, let me hand you what I'm gonna mark
15 as Exhibits --

16 THE REPORTER: You said you were going to
17 mark something as Exhibit 8 last time.

18 MS. MARTINI: Yeah, we're gonna skip that
19 one for now and make this one 8.

20 THE REPORTER: Okay.

21 (Deposition Exhibit 8 was marked.)

22 Q. (By Ms. Martini) Let me hand you what I've
23 marked as Exhibit 8. And across the top of that
24 document, what does it say?

25 A. It says, Employment Agreement.

1 Q. Okay. And it's dated what?

2 A. I'm sorry?

3 Q. It's dated when? May of 2012.

4 A. On the 25th.

5 Q. Okay. And is this -- is this your fax number,
6 the 706?

7 A. Yes, my house fax number. 342-7264.

8 Q. And it says -- if you turn to Page 4 --
9 it's Defense -- DEF 00048. And if you look under
10 Services/Title, it says you will be the chief operating
11 officer. And the services will be -- once the Asset
12 Purchase Agreement is completed. Then further down, it
13 says for the 33 restaurants being acquired under the
14 APA.

15 A. Correct.

16 Q. Did I read that correctly?

17 A. Uh-huh. There was no APA.

18 Q. And then on the very last page, Page 9, is
19 that your signature?

20 A. Uh-huh.

21 Q. Okay. That's your signature on the employment
22 agreement? Just to be clear.

23 A. Yes. And it has not been dated.

24 Q. Why would you sign an employment agreement
25 with them but not with GAMN?

1 A. This -- once again, this is a financial
2 arrangement, in my mind. And as far as GAMN was
3 concerned, Ed, once again, told us there were no
4 employment agreements based on the S-1 registration,
5 number one. Number two, the fact that we were teeing up
6 other companies like Canyon Cafe to buy. My term at
7 Amici's was for a specific amount of money. And as
8 things grew, I'd make different kind of monies. We'd
9 have to renegotiate again going forward and that's what
10 we agreed upon.

11 Q. Now, in April of 2012, Ed was trying to obtain
12 financing for GAMN. Do you recall that?

13 A. Uh-huh.

14 Q. And he tried to secure a loan through
15 La Jolla Cove.

16 A. Uh-huh.

17 Q. Do you remember that?

18 And he used personal property to secure
19 that loan.

20 A. That's what he said, yes.

21 Q. When -- were you aware of that in April?

22 A. Uh-huh.

23 Q. Did you tell him then that you had gotten a
24 call from someone and that you were --

25 A. No, because it was just a call. There wasn't

1 went to a couple meetings, like, with Robert Hersch and
2 all, but that's not my capacity. I've never done that.

3 Q. Do you think that Ed did enough to raise funds
4 for GAMN?

5 A. Ed tried as best as he could to raise funds
6 for GAMN, but we could not finance this company
7 traditionally. That means using -- you're leveraging
8 your current cash flow. That wasn't there, especially
9 with the S-1 filing and all. And he tried everything he
10 could, but our backs were kind of against the wall.

11 Q. Now, your role as president, what exactly were
12 your duties?

13 A. Initially, it was to run the operations and to
14 bring M&A to the organization because I knew the people
15 that we were trying to affiliate ourselves with. That
16 was the scope of my responsibilities.

17 Q. Were you also responsible for performing due
18 diligence on any new concepts for acquisition?

19 A. No.

20 Q. Were you responsible for creating budgets?

21 A. For the Amici's, yes.

22 Q. Were you the acting COO of the company?

23 A. I wouldn't call it that, no.

24 Q. What would you call it?

25 A. Director of operations. There wasn't scope

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
 DALLAS DIVISION

3 THE GREAT AMERICAN)
4 FOOD CHAIN, INC.)
5 AND EDWARD SIGMOND) CIVIL ACTION
6 VS.)
7)
8 ROBERT ANDREOTTOLA) NO.: 3:14-cv-1727-L

7 REPORTER'S CERTIFICATION
8 DEPOSITION OF ROBERT ANDREOTTOLA
9 JULY 30, 2015

9 I, Kimberly R. Spurger, a Certified Shorthand
10 Reporter in and for the State of Texas, hereby certify
11 to the following:

12 That the witness, ROBERT ANDREOTTOLA, was duly
13 sworn by the officer and that the transcript of the oral
14 deposition is a true record of the testimony given by
15 the witness;

16 That the original deposition was delivered to
17 Ms. Tanja K. Martini.

18 That a copy of this certificate was served
19 on all parties and/or the witness shown herein on
20 AUGUST 14TH;

21 That the amount of time used by each party at the
22 deposition is as follows:

23 MS. TANJA K. MARTINI - 1 HOUR:14 MINUTES
24 MR. J. DOUGLAS ULOTH - 2 MINUTES
25 MS. NANCY WURZMAN - 00 HOURS:00 MINUTES

25 I further certify that pursuant to FRCP Rule 30

1 (f)(1) that the signature of the deponent:

2 _____ was requested by the deponent or a party
3 before the completion of the deposition and that
4 signature is to be before any notary public and returned
5 within 30 days from date of receipt of the transcript.

6 If returned, the attached Changes and Signature
7 Page contains any changes and the reasons therefore:

8 X was not requested by the deponent or a party
9 before the completion of the deposition.

10 I certify that I am neither counsel for, related
11 to, nor employed by any of the parties or attorneys in
12 the action in which this proceeding was taken, and
13 further that I am not financially or otherwise
14 interested in the outcome of the action.

15 Certified to by me this, the 14th day of August,
16 2015.

17
18 *Kimberly P. Spurger*

19 Kimberly R. Spurger, Texas CSR 7709
20 Expiration Date: 12.31.16
21 K.R.S. Court Reporting
22 4220 Forbes Drive
23 Plano, Texas 75093
24 214.232.7422 Telephone
25



1 COUNTY OF DALLAS)
2 STATE OF TEXAS)

3 I hereby certify that the witness was notified on
4 _____, 2015, that the witness has 30 days or
5 (___ days per agreement of counsel) after being notified
6 by the officer that the transcript is available for
7 review by the witness and if there are changes in the
8 form or substance to be made, then the witness shall
9 sign a statement reciting such changes and the reasons
10 given by the witness for making them:

11 That the witness' signature was/was not returned
12 as of _____.

13 Subscribed and sworn to on this, the ___ day of
14 _____, 2015.

15
16
17
18
19 Kimberly R. Spurger, Texas CSR 7709
20 Expiration Date: 12.31.16
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